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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,767	02/07/2005	Peter Kastenmayer	3712036-00444	7519

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EXAMINER	
MEHTA, HONG T	

ART UNIT	PAPER NUMBER
1784	

NOTIFICATION DATE	DELIVERY MODE
07/27/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Examiner notes applicant has amended the claims submitted on January 11, 2010 to include non-elected species isoflavones. This limitation was not previously considered since it was considered a non-elected species. Consideration of new limitation of isoflavones in amended claims 1, 3, 6-11 and 27 necessitated new grounds of rejections in final office action dated April 19, 2010.

Applicant argues calcium and isoflavones in parallel with egg white considerably enhances calcium absorption. Applicant's argues unexpected results but have not provided any data or evidence to support this argument.

Applicant argues that the art applied to the claims alone or in combination fails to disclose or suggest a calcium absorption enhancer comprising a weight ratio of egg white/calcium between 20 to 60.

In response to applicant's argument, Kaisha is relied upon for teaching an egg powder which includes egg whites and calcium in a cookie with the advantages of promoting the absorption of calcium in a person of low calcium absorption ('172, Abstract). Kirschmann is relied as evidence of known egg whites weight portions in egg compositions for the calculation of the weight ratio of egg whites to calcium as taught by Kaisha. Kaisha discloses a ratio of egg whites to calcium at about 19. Shylakevich discloses a dietary supplement composition comprising phytosetrogen (isoflavones) and calcium for preventing bone disorders such as osteoporosis disease. Shylackevich discusses osteoporosis is prevented by a daily intake calcium to reduction in bone mass ('331, lines 55-68). It would have been obvious to one of ordinary skill in the art

to use Shylakevich's dietary supplement with isoflavones in Kaisha's cookie composition which includes the egg whites and calcium to promote absorption of calcium for desired health benefits such as ensuring skeletal integrity.

Applicant argues the references does not teach or suggest the use of egg whites for enhancing calcium absorption, especially in combination with an isoflavone or claimed ranges. The reason for combining references does not have to be the same reason as applicant. Shylakevich teaches the benefits of using isoflavones in a dietary supplement and is considered to provide motivation to combine with the food product of Kaisha.

Applicant argues that it would not have been obvious to optimize the ratio of egg whites and calcium. Kaisha discloses a ratio of egg white/calcium of 19. This value is so close as to be considered not patentably distinguished from the prior art and is considered prime facie obviousness. The compositions are in such close proportions to those in prior art that, prima facie, one skilled in the art would have expected them to have the same properties, and must be considered to have been obvious. *Titanium Metals Corporation of America v. Banner*, 227 USPQ 773. Additionally, it would have been obvious to one of ordinary skill in the art to adjust the egg powder including the egg whites in a cookie formulation depending upon one's preference for texture and added nutrient in food product. It is well known in the art that the amount of egg whites in cookies or baked goods affects the texture and mouthfeel of the cookie. It would have been obvious to one of ordinary skill to adjust or optimize the amount of egg whites in

the baked good of Kaisha depending upon the desired consistency and texture in the final product.

/HONG MEHTA/

Examiner, Art Unit 1784

July 15, 2010

/Jennifer C. McNeil/
Supervisory Patent Examiner, Art Unit 1784